



DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3555

[Docket No. RHS-22-SFH-0012]

RIN: 0575-AD28

Single-Family Housing Guaranteed Loan Program

AGENCY: Rural Housing Service, Agriculture Department (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), proposes to amend the current regulation for the Single-Family Housing Guaranteed Loan Program (SFHGLP) to implement changes related to the use of Special Servicing Options for Non-performing Loans. This proposed rule is intended to benefit borrowers by offering a less cumbersome option to eliminate documentation and eligibility challenges for borrowers who do not require payment reduction, provide lenders more flexibility in their servicing options, and reduce program risk of the guaranteed loan portfolio.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by going to the Federal eRulemaking

Portal: Go to <https://www.regulations.gov> and in the “Search Field” box, labeled “Search for Rules, Proposed Rules, Notices, or Supporting Documents,” enter the following docket number: **(RHS-22-SFH-0012)** or the **RIN# 0575-AD28**. To submit or view public comments, click the “Search” button, select the “Documents” tab, then select the following document title: **(Single-Family Housing Guaranteed Loan Program)** from the “Search Results,” and select the “Comment” button. Before inputting your comments,

you may also review the “Commenter’s Checklist” (optional). Insert your comments under the “Comment” title, click “Browse” to attach files (if available). Input your email address and select “Submit Comment.” Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “FAQ” link.

Other Information: Additional information about Rural Development and its programs is available on the internet at <http://www.rurdev.usda.gov/index.html>.

All comments will be available for public inspection online at the Federal eRulemaking Portal (<https://www.regulations.gov>).

FOR FURTHER INFORMATION CONTACT: Ticia Weare, Finance and Loan Analyst, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, STOP 0784, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250-0784. Telephone: (314) 679-6919; or email: ticia.weare@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background:

The USDA’s RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. RHS offers loans, grants, and loan guarantees for single- and multi-family housing, childcare centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. RHS also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, State and Federal Government agencies, and local communities.

The purpose of the SFHGLP is to assist approved lenders in providing low- and moderate-income households the opportunity to own adequate, modest, decent, safe, and sanitary dwellings as their primary residence in eligible rural areas. Eligible applicants

may purchase, build, rehabilitate, improve, or relocate a dwelling in an eligible rural area with 100 percent financing. The USDA-RD backed 90 percent loan note guarantee encourages lender participation by minimizing the risk of extending 100 percent loan to value, also referred to as no-money-down mortgage loans, to eligible low- and moderate-income rural applicants. Providing affordable homeownership opportunities promotes prosperity, which in turn creates thriving communities and improves the quality of life in rural areas.

The SFHGLP is authorized by the requirements of section 502(h) of the Housing Act of 1949, (42 U.S.C. 1472(h)), as amended. 7 CFR part 3555 sets forth the regulatory requirements of the SFHGLP which includes policies regarding originating, servicing, holding and liquidating SFGHLP loans. SFHGLP approved lenders make the initial eligibility determinations, and the Agency reviews those determinations to make a final eligibility decision. Under 7 CFR 3555.303 lenders are provided several traditional servicing options for Non-Performing Loans, and 7 CFR 3555.304 provides for the use of special servicing options if the traditional servicing options provided at 7 CFR 3555.303 have been exhausted or the lender has determined that the use of such servicing options would not resolve the delinquency.

The Agency's intent is to update the Special Servicing Options for Non-Performing Loans to improve the process for lenders requesting a Mortgage Recovery Advance (MRA).

II. Discussion of the Proposed Rule

RHS is issuing a proposed rule to amend the SFHGLP regulation, 7 CFR part 3555, Subpart G, to change how MRA funds are advanced and repaid.

The MRA is available to the lender only after all traditional options provided at 7 CFR 3555.303 have been considered or the lender has determined that use of such servicing options would resolve the delinquency. While this remains unchanged, the

Agency proposes to change how the funds are advanced and repaid. In the coming months and years, the Agency anticipates a greater volume of MRA's to be necessary to solve for the forbearance volume initiated by borrowers impacted by circumstances beyond their control.

A partial claim, or MRA as the Agency refers to it under 7 CFR 3555.304(d), is one of several special servicing options currently available to lenders. The MRA is funds advanced by the lender on behalf of a borrower to satisfy the borrower's debt, pay legal fees and foreclosure costs related to a cancelled foreclosure action and reduce principal.

The Agency will track the MRA payment due from the lender and perform normal servicing activities to collect the debt. The lender is advised to collect the debt from the borrower prior to releasing the lien. The lender's failure to collect the debt from the borrower will not relieve the lender from their obligation to repay the debt to USDA. If the lender does not repay the debt to USDA, that failure to repay could result in the lender losing their approved lender status. In the event of a loss claim by the lender, the MRA will be subtracted from the final calculation of the claim to be paid by the Agency.

The Agency also proposes to eliminate the second lien required by 7 CFR 3555.304(d)(7). By eliminating this requirement, modification of the loan would not always be required when there is no change to the terms, which may allow the loan to remain securitized. The lender or servicer issuing a servicer advance to the borrower and seeking reimbursement by the Agency should follow the Agency suggested practices. The amount of the servicer advance will show on the borrower's statement along with the principal balance of the loan, but no payment arrangement will be required. The lender or servicer will collect the servicer advance from the borrower when the first lien is satisfied, and the full amount of the servicer advance will be due to the Agency from the lender.

The current process for a lender to take advantage of this servicing option and be reimbursed for the advance requires the borrower to sign the subordinate promissory note

payable to the Agency, a second lien be placed on the property, and the final recorded mortgage be submitted to the Agency. Placing a second lien on the property puts the burden of collection on the Agency instead of the lender.

These proposed changes are expected to provide lenders more flexibility in their servicing options and will benefit borrowers and lenders by offering a less expensive and less cumbersome option, creating an environment that supports successful future homeownership.

III. Summary of Proposed Rule Changes

The following is a summary of the proposed changes to 7 CFR part 3555.

(1) Amend § 3555.304 (b)(3) by removing language pertaining to title search and recording fees. These services will no longer be utilized by the lender.

(2) Amend § 3555.304 (d)(4) by removing language pertaining to the reimbursement of fees for title search and/or recording fees, which costs will no longer be incurred. The lender will be responsible for issuing a servicer advance to the borrower and seeking reimbursement from the Agency. The advance will show on the statement along with the principal balance of the loan, but no payment arrangement will be required. The full amount of the advance will be due from the lender prior to the release of lien on the original recorded note.

(3) Amend § 3555.304 (d)(6) by revising sub-paragraphs (i), (ii), (iii), (iv), and (v) to eliminate the second lien requirement. By eliminating this requirement, modification of the loan would not always be required as there is no change to the terms, thus may allow the loan to remain securitized.

(4) Amend § 3555.304 by amending sub-paragraph (d)(7) and eliminating (d)(8) to remove references to the borrower's requirement to execute a promissory note payable to the Agency and a mortgage or deed-of-trust in recordable form perfecting a lien naming the Agency as the secured party for the amount of the mortgage recovery advance.

IV. Regulatory Information

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 [42 U.S.C. 1480(k)], as amended, authorizes the Secretary of the Department of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title. Regulations implementing section 502(h), the SFHGLP, are located at 7 CFR part 3555.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program is not subject to the requirements of Executive Order 12372, “Intergovernmental Review of Federal Programs,” as implemented under USDA's regulations at 2 CFR part 415, subpart C.

Executive Order 12866, Regulatory Planning and Review

This proposed rule has been determined to be non-significant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this proposed rule: (1) unless otherwise specifically provided, all state and local laws that conflict with this proposed rule will be preempted; (2) no retroactive effect will be given to this proposed rule except as specifically prescribed in the proposed rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before suing in court that challenges action taken under this proposed rule.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government.

This proposed rule does not impose substantial direct compliance costs on state and local governments; therefore, consultation with the States is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this proposed rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Native American Coordinator at: *ALAN@usda.gov* to request such a consultation.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million, or more, in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, and tribal governments, or the private sector.

Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this proposed rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that i) this action meets the criteria established in 7 CFR 1970.53(f); ii) no extraordinary circumstances exist; and iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required

Regulatory Flexibility Act

This proposed rule has been reviewed with regards to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature on this document that this proposed rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Assistance Listing

The program affected by this proposed rule is listed in the Assistance Listing Catalog (formerly Catalog of Federal Domestic Assistance) under number 10.410, Very Low to Moderate Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0179. This

proposed rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Civil Rights Impact Analysis

Rural Development has reviewed this proposed rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis, to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the proposed rule and available data, it has been determined that implementation of the proposed rule will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian tribes, or persons based on their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Non-Discrimination Policy

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: program.intake@usda.gov

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List of Subjects in 7 CFR Part 3555

Loss claim coverage – loan guarantee limits, Mortgage recovery advance, Special relief measures, Special servicing options, Stand-alone MRA.

For the reasons discussed in the preamble, the Rural Housing Service

is proposing to amend 7 CFR part 3555 as follows:

PART 3555 – GUARANTEED RURAL HOUSING PROGRAM

1. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1471 *et seq.*

Subpart G – Servicing Non-Performing Loans

2. Amend § 3555.304 by revising paragraph (b)(3), (d)(4), (d)(6)(i) through (v), (d)(7), and removing (d)(8) to read as follows:

§ 3555.304 Special servicing options.

* * * * *

(b) * * *

(3) Expenses related to special loan servicing shall not be charged to the borrower. However, if a foreclosure was initiated and canceled prior to special loan servicing, legal fees and costs for work performed in relation to the foreclosure costs before the cancellation date may be charged to the borrower.

* * * * *

(d) * * *

(4) If the borrower is eligible for a mortgage recovery advance, the servicer will advance the funds to the borrower's account and create a non-interest-bearing recoverable servicing advance. The advance is to be provided on the mortgage statements, along with the principal balance of the loan, but no payment arrangement will be required. The servicing advance must be collected from the borrower prior to the earlier of the release of lien or the transfer of title to the property by voluntary or involuntary means.

* * * * *

- (6) The following terms apply to the repayment of mortgage recovery advances:

(i) Borrowers are not required to make any monthly or periodic payments on the mortgage recovery advance; however, borrowers may voluntarily submit partial payments without incurring any prepayment penalty.

(ii) The borrower is responsible for payment of the mortgage recovery advance to the lender in full at the earlier of the following:

(A) When the mortgage lien and the guaranteed note are paid off; or

(B) When the borrower transfers title to the property by voluntary or involuntary means.

(iii) Repayment of any part of the mortgage recovery advance reimbursed by the Agency must be remitted to the Agency by the lender at the earlier of the following:

(A) When payment is received from the borrower.

(B) The mortgage lien is released; or

(C) The borrower transfers title to the property by voluntary or involuntary means.

(iv) The Agency will collect this Federal debt from the lender.

(v) In the event of a loss claim, the mortgage recovery advance will be considered in calculating the claim paid by the Agency. The total amount paid, including the mortgage recovery advance, cannot exceed the Agency's maximum exposure, as defined in § 3555.351(b).

(7) The lender may request reimbursement from the Agency for a mortgage recovery advance. The lender shall repay any such reimbursement as provided in paragraph (d)(6) of this section.

Cathy Glover,

Acting Administrator,

Rural Housing Service.

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